IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

THURSDAY, THE 13TH SEPTEMBER 2007 / 22ND BHADRA 1929

Crl.MC.No. 4418 of 2003()

CC.28/2003 of ADDL.CHIEF JUDICIAL MAGISTRATE COURT, THALASSERY

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PETITIONER: 1ST ACCUSED:

ASHRAF ABDULLA, S/O. KUNHABDULLA,
MEETHALE CHEKKAYAT HOUSE, PUTHOOR,
CHENDAYAD.

BY ADV. SRI.C.KHALID
SRI.N.GOPINATHA PANICKER

RESPONDENTS: COMPLAINANT & STATE:

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1. KALLINGANDAVIDA AYSHA,
D/O. IBRAHIM, KALLINGAL VEEDU,
KOLAVALLUR, THOOVAKUNNU.

2. STATE OF KERALA, REP. BY PUBLIC
PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM, KOCHI-31.

BY PUBLIC PROSECUTOR SRI. AMJAD ALI

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 13/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.R.UDAYABHANU, J.

Crl.M.C. NO. 4418 OF 2003

Dated this the 13th day of September, 2007

ORDER

Petitioner is the first accused in Crime No.161/2002 of Panoor Police Station and in C.C.No.151/2003 which is the split up case from C.C.No.28/2003 before Additional Chief Judicial Magistrate, Tellicherry for the offence punishable under Section 498(a) r/w 34 IPC. He has sought for getting set aside the proceedings pending.

2. The rest of the accused were tried and acquitted by the court below as per judgment dated 13.5.03. It is the contention of the petitioner that proceedings are liable to be quashed in view of the fact that the rest of the accused were acquitted. The allegations of prosecution that the defacto complainant was commented upon that she is hard of hearing (which she has admitted) and is not gook looking is hardly sufficient to constitute cruelty envisaged under Section 498 A. Copy of deposition of PW1 was also produced. Annexure A2 is the copy of the complaint filed by the petitioner in which there

are allegations of physical cruelty and that she had at times thought of committing suicide.

3. In view of the dictum and the decision laid down by the Full Bench of this Court in ***Moosa v. Sub Inspector of Police*** [2006 (1) KLT 552 (F.B.)], I find that the evidence adduced against the co-accused is irrelevant when the matter is considered under Section 482 of the Criminal Procedure Code. Further in the light of the averments in Annexure A2 complaint, I find that the same is not liable to be quashed on the ground that the co-accused have been acquitted and that the complainant has not stated anything about the physical cruelty alleged in the complaint.

The Crl.M.C. is accordingly dismissed.

K.R.UDAYABHANU, JUDGE

vps

ANTONY DOMINIC, JUDGE

OP NO.16383/98

JUDGMENT

5TH SEPTEMBER, 2007